

CITY OF ANN ARBOR AND PUBLIC SCHOOLS FOR THE CITY OF ANN ARBOR

AGREEMENT REGARDING JOINT RECREATION PROGRAMS – 2010/2011

This Agreement Regarding Joint Recreation Programs (this “Agreement”) is made as of this ____ day of _____, 2010 between the **CITY OF ANN ARBOR**, a Michigan municipal corporation (the “City”), having its offices at 100 N. Fifth Avenue, Ann Arbor, Michigan 48104, and the **PUBLIC SCHOOLS FOR THE CITY OF ANN ARBOR**, a body corporate organized and existing under the Michigan Revised School Code (“AAPS”), having its offices at 2555 S. State Street, Ann Arbor, Michigan 48106.

The circumstances underlying the execution of this Agreement are as follows:

A. The City and AAPS have conducted joint recreation programs over a period of more than eighty (80) years.

B. The joint recreation programs (the “Programs”) currently include baseball, softball, kickball, soccer, field hockey, flag football, and lacrosse which are played on some fields and designated park spaces that are owned by the City and some fields that are owned by AAPS. The fields and designated park spaces currently used in the Programs that are owned by the City are listed on attached Exhibit A, and the fields currently used in the Programs that are owned by AAPS are listed on attached Exhibit B. “Programs” are limited to activities advertised as being offered through AAPS Community Education and Recreation (“Rec & Ed”).

[Redacted]

C. The parties wish to allocate and memorialize their respective responsibilities with respect to the Programs.

NOW THEREFORE, the parties agree as follows:

1. Scope of Agreement. This Agreement shall serve to allocate responsibilities with regard to all fields and park spaces on which the Programs are conducted. If a field or park space owned by the City or a field owned by AAPS is added to the Programs, this Agreement shall be deemed to apply to such additional fields.

2. Responsibilities of AAPS. AAPS shall have the following responsibilities with regard to the Programs:

[Redacted]

(a) Administer the Programs and coordinate and schedule in conjunction with Ann Arbor Parks and Recreation Services, the use of all fields and park spaces (City owned and AAPS owned) for each season in which the Programs are conducted. Such responsibilities include issuing permits for use of the fields; qualifying teams and individuals to participate in the Programs; promulgating schedules; processing all applications for permits to use fields and issuing (or if deemed necessary, revoking) permits; and collecting fees for the Programs. AAPS shall make the scheduling software program used by AAPS to schedule the Programs, which is updated in real time, available online for viewing by Ann Arbor Parks and

Recreation Services. City and AAPS staff shall meet annually to review the scheduling software program. All events shall be identified by AAPS in the field schedule submitted to Ann Arbor Parks and Recreation as either Rec & Ed (RE) or Private (P) use.

- (b) Provide the City's Field Operations Services Unit with a schedule for each City owned field or park space used in the Programs at least seven (7) days prior to scheduled use.
- (c) During the season of the Programs, issue permits for usage of City owned and AAPS owned fields to third parties or groups who are not participating in any of the Programs, although AAPS shall be entitled to give priority to participants in the Programs over any such third parties or groups. AAPS shall identify such permits in the field schedule as Private Use (P). AAPS shall pay the City for cost recovery for third parties or groups that are not participating in any of the Programs according to the schedule provided in Exhibit C. Payment shall be made by December 1st of each year, at the conclusion of the program season.
- (d) Except as provided in paragraph 3(b) below, appropriately maintain all fields (including mowing all fields) owned by AAPS that are used in conjunction with the Programs.
- (e) With regard to all fields used for baseball, softball, and kickball (whether owned by the City or by AAPS): (i) remove bases and cap holes before grooming on each day on which a game is scheduled (excluding games that are being canceled due to other conditions, field conditions or other reasons); (ii) on game days, remove excess water from the fields; (iii) on game days, mark foul lines, batter's boxes, three foot lanes, sixteen foot circles, coach's boxes, catcher's boxes and other basic field markings; (iv) set pitcher's plates and bases on game days; (v) on weekdays, determine whether the fields are playable after 3:00 pm (vi) for scheduled events, make any lighting schedule adjustments needed on-site on the day of the event via the Musco Lighting toll-free number or web site, or pass responsibility for lighting schedule adjustments to field users, as desired
- (vii) if programmed activity necessitates the pitching mounds, batters boxes and home plate area on Veterans Memorial Field 5 and West Park Baseball fields to be rebuilt during the course of the playing season, AAPS or its subcontractor shall be allowed to make any improvements deemed necessary to restore them to their original condition at their own expense and (viii) if necessary and at its own expense, AAPS or its subcontractor may utilize City supplied materials at Veterans Memorial, West Park and Southeast area to fill in depressions that are collecting water in order to facilitate scheduled games.
- (f) AAPS may groom any designated park space for the purposes of preparing the field for interscholastic baseball or softball games for the use of any

AAPS high school or middle school. AAPS shall provide the City's Field Operations Services Unit with a schedule for each City owned field or Park space that AAPS will groom for the above stated purpose seven (7) days prior to scheduled use.

- (g) Perform field repairs on AAPS owned fields as required to maintain them in a suitable playing condition.
- (h) On an annual basis, aerate, seed, top soil and fertilize AAPS owned fields to maintain them in a suitable playing condition.
- (i) Pay the rate of twenty-five (\$25.00) dollars per hour to the City for the actual use of field lights for night games at any City owned baseball fields. Partial hours shall be rounded up to the next 15 minute increment and payable at the rate of six dollars and twenty-five cents (\$6.25) per 15 minutes.
- (j) Provide notice and pay the reasonable cost of time and materials to the City for supplying, setting, and removing home plates and bases as provided in 3(g) below, or supply, set, and remove home plates and bases as needed.
- (k) AAPS shall reimburse the City for anchor placement for the installation of more than two (2) base lengths per field in accordance with Exhibit C.

3. Responsibilities of City. The City shall have the following responsibilities with regard to the Programs:

- (a) Mow all City owned fields and park spaces periodically to maintain them in suitable playing condition.
- (b) Groom all City owned fields, scheduled for baseball, softball or kickball use in advance by AAPS, as conditions allow and as deemed necessary by City, to ensure suitable playing conditions. Groom only those AAPS owned fields scheduled for use in advance by AAPS. City must have a minimum seven (7) day advanced notice to groom City and AAPS owned fields, unless otherwise approved by the City Field Operations Services Unit.
- (c) Remove trash and loose litter from all City owned fields and park spaces and empty trash receptacles used in connection with such fields on a regular basis.
- (d) Open, close and maintain restrooms at City owned fields (where applicable).

(e) Store all bases, pitcher's plates and home plates on all baseball and softball fields. Storage location to be determined mutually by both parties on an annual basis.

(f) On weekdays at all fields (whether owned by the City or by AAPS), determine whether the fields are playable between 9:00 am and 3:00 pm.

(g) On all fields (whether owned by the City or AAPS), when requested 30 days in advance by AAPS, supply and set pitcher's plates, home plates and bases at the beginning of each season.

(h) Perform field repairs on City owned fields as required to maintain them in a suitable playing condition. Provide a supply of infield material at Veterans Memorial Park, West Park, Southeast Area Park and other parks as needed to fill minor infield irregularities due to depressions resulting in water collecting.

(i) Irrigate City Owned fields that have existing irrigation systems based on environmental and cultural needs in order to maintain a healthy stand of grass and adequate field conditions.

(j) Aerate, over seed and top-dress City owned fields annually, at a minimum, to maintain them in a suitable playing condition. City owned fields with existing irrigation systems shall be fertilized based on environmental and cultural needs.

(k) Give AAPS staff access to City owned fields as required to perform the services described in paragraph 2(h).

(l) The City shall ensure the integrity and playability of two (2) base lengths per field prior to the start of the AAPS scheduled events in the spring of each year.

4. Expenses; Fees. Except as specifically provided in paragraphs 2 and 3, AAPS shall perform the responsibilities described in paragraph 2 at its sole cost and expense, and the City shall perform the responsibilities described in paragraph 3 at its sole cost and expense. AAPS shall be entitled to charge fees for the services that it is providing for both Programs and third party activities in the form of entrance or registration fees for teams or individual players. In addition, AAPS is required to charge third party users or groups not participating in the Programs fees in accordance with Exhibit C. The fees may reflect a premium for players that are not residents of the City and may also reflect a different premium for players that are not residents of the AAPS District. AAPS shall be entitled to retain all of the proceeds from AAPS fees, with the exception of cost recovery fees which shall be collected in accordance with Exhibit C and remitted to the City. Payment shall be made by December 1st of each year, at the conclusion of the season.

5. No Impact on Recreation Advisory Commission. Pursuant to certain prior actions or policies, the City and AAPS have established a Recreation Advisory Commission. Nothing in this Agreement is intended to affect the existence, function, composition or responsibilities of the Recreation Advisory Committee.

6. Insurance/Indemnification. The City shall maintain commercial general liability insurance with respect to all fields owned by the City, and AAPS shall maintain commercial general liability insurance with respect to all fields owned by AAPS. Any such insurance policies shall be subject to the following requirements:

- (a) It shall be maintained with an insurance company that is authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a minimum Financial Size Category of "V".
- (b) It shall name the other party to this Agreement as an additional insured.
- (c) It shall be considered as primary to any other insurance maintained by the other party (i.e., the party named as an additional insured), including any self-insured retentions.
- (d) It shall have minimum limits of liability of two million (\$2,000,000) dollars.

Each party shall provide the other party with a certificate with respect to its insurance coverages within twenty (20) days of the date of this Agreement, and thereafter within twenty (20) days after any written request for such certificate.

To the fullest extent permitted by law, for any loss not covered by insurance under this Agreement, each party shall indemnify, defend and hold harmless the other party, its officers, employees and agents from and against all suits, claims, judgments and expenses, including reasonable attorney's fees, resulting from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the other party or its officers, employees and agents occurring in the performance of such party's responsibilities under this Agreement. Notwithstanding the above, each party retains the right to assert any defenses it may have to any actions or causes of action, whether in law or equity, including but not limited to government immunity.

7. Term / Termination. This Agreement shall commence on _____, 2010 and shall terminate on December 1, 2011. This Agreement may be terminated by either party in the case of a breach of this Agreement by the other party, if the breaching party has not corrected the breach within 15 days after written notice of the breach. The parties shall have the option to renew this Agreement or a portion thereof, on 90 days advance written notice, for 2 successive 2-year periods upon the same terms and conditions herein, if mutually agreed upon in writing. The City may approve renewals of this Agreement administratively, as long as the

renewals are substantially similar to the general scope and intent of this Agreement.

8. Assignment. Neither party may assign its rights under this Agreement. Notwithstanding the foregoing, either party may subcontract any of its responsibilities under this Agreement to third parties, although no such subcontract shall relieve the party of such responsibilities.

9. Notice. All notices required under this Agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in the Preamble to this Agreement or to such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this Agreement when personally delivered to other party or one (1) business day after being placed in the United States mail, postage prepaid and addressed to the other party as provided above.

10. Amendments. This Agreement may not be altered, amended or modified except by a written amendment signed by the City and AAPS.

11. Choice of Law. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of Michigan.

12. Severability. If a clause of the Agreement is found by a court to be invalid, that finding will not invalidate any other clause or provision of this Agreement.

13. No Prior Representations. Neither party has relied on any prior representations in entering into this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CITY OF ANN ARBOR

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

By: _____
Roger W. Fraser, City Administrator

By: _____ Sue
McCormick, Service Area Administrator

Approved as to Form and Content

By: _____
Stephen K. Postema, City Attorney

**PUBLIC SCHOOLS FOR THE CITY OF
ANN ARBOR**

By: _____
J. Todd Roberts, Superintendent

EXHIBIT A

Allmendinger* Buhr Park ** Burns Park Clinton Park
 Creal Park Esch Park Foxfire North Park Frisinger***
 Green Brier Park Hunt Park Landsdowne Park Lawton
 Park Las Vegas Park Lawton Park Leslie Park Maryfield
 Wildwood Park Northside Park Riverside Park Scheffler
 Park Sugarbush Park Southeast Area Park Veterans
 Memorial Park Virginia Park West Park (Baseball field
 only - closed for 2010 season) Winchell Park Windemere
 Park Woodbury Park

* Allmendinger may be reserved by the City for UM football parking. AAPS to be notified by July 1st. ** Certain fields at Buhr Park may be available for City use only as mutually agreed by City and AAPS annually by April 1st*** Frisinger Park may be reserved by the City for UM football parking. AAPS to be notified by July 1st

EXHIBIT B

Abbot Elementary Allen
Elementary Angell
Elementary Ann Arbor
Open @ Mack Bach
Elementary Bryant
Elementary Burns Park
Elementary Carpenter
Elementary Clague Middle
School Dicken Elementary
Eberwhite Elementary
Forsythe Middle School
Freeman Elementary
Haisley Elementary Huron
High King Elementary
Lakewood Elementary
Lawton Elementary Logan
Elementary Mitchell
Elementary Pattengill
Elementary Pioneer High
Pittsfield Elementary
Scarlett Middle School
Slauson Middle School
Stone High Tappan Middle
School Thurston
Elementary Wines
Elementary

EXHIBIT C

City Costs for Ann Arbor Public Schools
Ball Field Usage and Services

Ball Field Usage – Resident \$21.00 per booking* Ball Field usage – Non-resident \$24.00 per
booking* Ball Field Grooming Fee \$80.00 per grooming service Ball Field Anchor Fee
\$121.84 per anchor placement

*One booking is equal to two (2) hours of ball field usage.